

D. P. U. 97-95

Investigation by the Department of Public Utilities, on its own motion, into Boston Edison Company's compliance with the Department's Order in D. P. U. 93-37.

ORDER OPENING AN INVESTIGATION OF BOSTON EDISON COMPANY'S
COMPLIANCE WITH THE DEPARTMENT'S ORDER IN D. P. U. 93-37

I. INTRODUCTION

On June 18, 1993, the Department of Public Utilities ("Department") issued its Order on the petition of Boston Edison Company ("BECo" or "Company") for approval to (1) invest up to \$45 million in a wholly owned, non-utility subsidiary, Boston Edison Technology Group, Inc. ("BETG"); (2) issue advances to the proposed subsidiary pursuant to the Tax Sharing Agreement; and (3) enter into a related Management Services Agreement and Tax Sharing Agreement between the Company and the proposed subsidiary. Boston Edison Company, D. P. U. 93-37 (1993) ("Order"). In its Order, the Department accepted two settlements that resulted in approval by the Department of BECo's petition, except for the proposed Tax Sharing Agreement. (1) By subsequent order, the Department approved the Tax Sharing Agreement. Boston Edison Company, D. P. U. 93-37-A (1994).

In support of its petition, BECo stated that, of the total proposed investment, the largest amount most likely would be invested in demand-side management ("DSM") services, with smaller amounts invested in electric vehicles and electric generation services. D. P. U. 93-37, at 3, citing Exh. BE-1, at 19. The Department found that there was a reasonable nexus between the proposed BETG business ventures in DSM, the electric vehicle industry, and the electric generation industry, and the Company's core business to justify approval of the investment. Id. at 17.

In granting approval, the Department considered the methods employed in the Company's accounting system to protect the utility's ratepayers from cross-subsidization of proposed subsidiary by the utility as a factor in determining whether to grant the approval. Id. at 14, 18. The Department found that the record keeping practices described in the Partial Settlement provided safeguards to protect the Company's ratepayers from subsidizing the operations of BETG. Id. at 18.

In the course of our investigation in other currently pending proceedings, (2) allegations of cross-subsidization of BETG by BECo have been presented to the Department. The Department determines that the nature and extent of the relationship between BECo and BETG warrant an investigation. By this Order, we commence such an investigation.

II. VOTE TO OPEN INVESTIGATION

Untitled

In approving the Company's original investment in BETG, the Department sought to ensure that the Company's monopoly ratepayers were protected against cross-subsidization by the Company of its affiliate. However, questions have been raised before the Department with respect to the Company's investment in BETG. Further, questions have been raised with respect to BETG's role in the cable industry relative to any investment made by the Company. Accordingly, on our own motion, the Department hereby votes to open an investigation into whether the Company is in compliance with D. P. U. 93-37.

To this end, the investigation shall include, but not be limited to, the following issues: (1) whether the Company has invested an amount in excess of \$45 million in its subsidiary, BETG; (2) whether the investment of \$45 million approved by the Department was used for anything other than the three stated purposes, i.e., DSM services, electric vehicles, or electric generation services; (3) whether the Company has transferred any other asset to BETG without regulatory approval, and if so, whether such approval were necessary; (4) whether the Company invested any amount in the joint venture between its subsidiary, BETG, and Residential Communications Network ("RCN") without regulatory approval, and if so, whether such approval were necessary; and (5) the Company's relationship, if any, with RCN, independent of the Company's subsidiary, BETG.

While a review of the Company's compliance with D. P. U. 93-37 will necessarily focus on BECo's ratepayers and the financial stability of the Company, the Department determines that the scope of this proceeding is broader. The Department's regulatory authority extends beyond the electric industry. By recently enacted legislation, the Department regulates companies that provide cable service. Section 2 of Chapter 43 of the Acts of 1997. The allegations that have prompted the Department to investigate the Company's compliance with D. P. U. 93-37 persuade the Department that an examination of the impact the Company and its relationship with BETG and RCN may have had on competition in the telecommunications and cable industries is also warranted. Therefore, the Department's investigation is not limited to the Company's compliance with the Department's Order issued pursuant to G. L. c. 164, § 17A. As part of this investigation, the Department will also examine the impact, if any, that the Company's arrangements with BETG and RCN have had on competition in the cable and telecommunications industries. Report and Order and Further Notice of Proposed Rulemaking Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation, MM Docket No. 92-266, FCC 93-177, adopted April 1, 1993 (released May 3, 1993).

The Department invites all interested persons who are substantially and specifically affected by issues under investigation to petition to intervene in this proceeding. Petitions to intervene in this docket must be filed with the Secretary of the Department by 5:00 P. M., on October 28, 1997. The Department will schedule expeditiously a procedural conference at its offices to establish a procedural schedule for the orderly conduct of this investigation. The Department intends that this proceeding be conducted as an "adjudicatory proceeding" as defined in G. L. c. 30A, § 1(1).

III. ORDER

Accordingly, the Department

VOTES: To open an investigation into Boston Edison Company's compliance with D. P. U. 93-37; and it is

ORDERED: That petitions to intervene in this investigation shall be filed with the Secretary of the Department by October 28, 1997; and it is

By Order of the Department,

Untitled

Janet Gail Besser, Acting Chair

John D. Patrone, Commissioner

1. On May 14, 1993, the Company and the Town of Reading Municipal Light Department filed with a Department a Joint Motion to Approve a Settlement Agreement. On May 20, 1993, the Company, the Attorney General of the Commonwealth and the Coalition of Non-Utility Generators filed a Joint Motion for Approval of a Partial Settlement ("Partial Settlement").
2. The pending proceedings include: Boston Edison Company, D.P.U. 96-23; and Boston Edison Company, D.P.U. 97-63.